

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

(202) 955-9600

FACSIMILE

(202) 955-9792

NEW YORK, N.Y.

LOS ANGELES, CA.

MIAMI, FL.

CHICAGO, IL.

STAMFORD, CT.

PARSIPPANY, N.J.

BRUSSELS, BELGIUM

HONG KONG

AFFILIATED OFFICES

NEW DELHI, INDIA

TOKYO, JAPAN

POCKET FILE COPY ORIGINAL

SECRET

WRITER'S DIRECT DIAL
(202) 955-9888

August 11, 1997

VIA HAND DELIVERY

**William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554**

RECEIVED

AUG 11 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notification of Ex Parte Presentation
CC Docket No. 96-98**

Dear Mr. Caton:

In response to the Commission's Public Notice entitled "Common Carrier Bureau Seeks Recommendations On Commission Actions Critical To the Promotion Of Efficient Local Exchange Competition" dated July 18, 1997 (DA 97-1519), CCBPol 97-9, American Communications Services, Inc. ("ACSI") filed its written response with the Commission today. Because ACSI's recommendations may effect the merits or outcome of the above-referenced proceeding, pursuant to Section 1.1206(b)(1) of the Commission's Rules, ACSI hereby submits an original and two copies this *ex parte* notification for inclusion in the public record.

Respectfully submitted,

John Hittman

John J. Heitmann

Enclosures

No. of Copies rec'd
List ABCDE

043

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

EX PARTE OR LATE FILED

Recommendations on Commission)
Actions Critical to the Promotion) CCBPol 97-9
of Efficient Local Exchange)
Competition)

RECEIVED

AUG 11 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

RESPONSE OF
AMERICAN COMMUNICATIONS SERVICES, INC.

Riley M. Murphy
Charles H. N. Kallenbach
James C. Falvey
AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business
Parkway
Suite 100
Annapolis Junction, MD 20701

Brad E. Mutschelknaus
John J. Heitmann
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

(202) 955-9600

SUMMARY

In the eighteen months since the Telecommunications Act of 1996 became law, it seems safe to say that local exchange competition has not developed as rapidly nor as pervasively as Congress intended. New entrants such as ACSI continue to experience tremendous difficulties in securing unbundled loops, number portability and nondiscriminatory access to OSS on a dependable basis. The Eighth Circuit recently and erroneously stripped the Commission of portions of its jurisdiction and denied the Commission its due deference with respect to several of the its rules implementing the local competition provisions of the 1996 Act. Nevertheless, ACSI believes that there is much that the Commission can do to fulfil its mandate to ensure that Congress' goal of competitive local exchange markets becomes a reality.

Despite the *Iowa* decision, the Commission has the necessary jurisdiction to take appropriate regulatory and enforcement actions designed to remove roadblocks to local completion *today*. Competition cannot and need not await the resolution of an appeal of the *Iowa* decision.

Thus, ACSI implores the Commission to take immediate action to clarify, adopt and enforce rules relating to the provisioning of UNEs, number portability and resale. For instance, the Commission should promptly grant the LCI/CompTel Petition for expedited rulemaking with regard to OSS. Further, it should commence a similar rulemaking to adopt performance standards for the provisioning of unbundled loops and other UNEs. The Commission also must adopt an aggressive enforcement posture. Specifically, ACSI urges the Commission to remove the ILECs' ability to rely on delay traditionally associated with regulatory enforcement and their own ability to finance and sustain prolonged litigious

proceedings by adopting a local competition dispute resolution mechanism capable of addressing complaints quickly and in a cost-efficient manner that renders the process useable by competitors of all sizes.

ACSI also submits that the Commission, on an interim basis pending appeal, should modify its "pick and choose" rule so that requesting carriers can pick and choose among entire sections (as opposed to individual provisions) of state PUC approved interconnection agreements, at any time during the negotiating process or the effective period of an agreement reached by the parties.

Further, ACSI believes that the set of commitments made by Bell Atlantic/NYNEX in exchange for expedited approval of the two BOCs' proposed merger should be adopted by the Commission as the starting point for its public interest assessment of all section 271 applications. No future section 271 application should be considered complete without incorporating an equally comprehensive list of commitments. Moreover, ACSI submits that the public interest assessment of future section 271 applications should mandate commitments by the BOCs to (1) allow carriers to "pick and choose" individual provisions of other agreements, (2) unbundle all network elements for which unbundling is "technically feasible", and (3) amend licensing agreements as is necessary to prevent infringement of the intellectual property rights of third party equipment vendors. Recognizing that the section 271 entry process is incapable of reaching all ILECs (and will not soon reach any BOC that places interLATA entry low on its list of priorities), ACSI urges the Commission to adopt these same commitments as prerequisites for satisfying its public interest review of any future proposed ILEC transfer of licenses.

TABLE OF CONTENTS

I.	The Commission Should Take Immediate Action to Clarify, Adopt and Enforce Rules Relating to Those Sections of the 1996 Act Where the Eighth Circuit Has Not Circumscribed Its Authority to Do So	2
A.	The Commission Must Establish Additional Rules Addressing ILEC Provisioning of UNEs	4
B.	The Commission Must Adopt an Aggressive Enforcement Posture	7
II.	Pending Appeal of the Eighth Circuit's <i>Iowa</i> Decision, the Commission Should Modify Its "Pick and Choose" Rule	10
III.	The Commission's Public Interest Assessment of Section 271 Applications and ILEC Transfers Should Incorporate, <i>Inter Alia</i> , the Commitments Made By Bell Atlantic/NYNEX In Exchange for Expedited Commission Approval of Their Proposed Merger	12
IV.	Conclusion	15

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Recommendations on Commission)
Actions Critical to the Promotion) CCBPol 97-9
of Efficient Local Exchange)
Competition)

DOCKET FILE COPY ORIGINAL

**RESPONSE OF
AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services, Inc. ("ACSI") submits this Response to the Commission's request for recommendations on Commission actions critical to the promotion of efficient local exchange competition pursuant to the Commission's July 18 and July 24, 1997 Public Notices in CCBPol 97-9.¹ As an alternative access vendor and competitive local exchange carrier ("CLEC"), ACSI has an obvious and considerable interest in the promotion of efficient local exchange competition and, thus, in this proceeding as well. As the Commission is aware, ACSI has experienced substantial difficulties in ordering unbundled loops and obtaining reliable operations support systems ("OSS") and number portability and, therefore, urges the Commission to take an active role in removing such roadblocks to local competition. In fact, ACSI believes that, even in light of the Eighth Circuit's decision in *Iowa Utilities Board v. FCC*,² the Commission has the necessary jurisdiction to take

¹ Pursuant to the July 18, 1997 Public Notice, *Ex Parte* filings concurrently are being made to incorporate a copy of this Response in each of the following dockets: E-97-09; CC-96-98; and RM 9101.

² *Iowa Utilities Bd. v. FCC*, No. 96-3321 et al., slip op. (8th Cir. July 19, 1997) ("*Iowa Utilities Bd.*"). Although ACSI disagrees with the Eighth Circuit's conclusions limiting of the Commission's jurisdiction, the recommendations set forth in this Response are made in light of the jurisdictional limitations set forth by that court.

regulatory and enforcement actions necessary to ensure that the congressional intent to foster the development of local competition is realized.³ Thus, ACSI endorses many of the proposals for Commission action set forth by AT&T and MCI⁴ and makes the following recommendations.

I. The Commission Should Take Immediate Action to Clarify, Adopt and Enforce Rules Relating to Those Sections of the 1996 Act Where the Eighth Circuit Has Not Circumscribed Its Authority to Do So

To date, the ILECs collectively have executed hundreds, if not more than a thousand, interconnection agreements that call for, *inter alia*, the provisioning of unbundled network elements ("UNEs") and number portability in accordance with the Telecommunications Act of 1996 ("1996 Act") and Commission rules. However, the fact that the ILECs have implemented few if any of these agreements on a commercially feasible basis⁵ demonstrates

³ See, e.g., Letter to William F. Caton, Acting Secretary, FCC from Brad E. Mutschelknaus, Kelley Drye & Warren LLP for ACSI dated Aug. 1, 1997, *ACSI v. BellSouth*, File No. E-97-09 ("the Commission retains the jurisdiction to hear ACSI's complaint"). See also ACSI Comments, RM 9101 (LCI/CompTel Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems).

⁴ Letter to A. Richard Metzger, Jr., Deputy Chief CCB, FCC from Mark C. Rosenblum, Vice President Law and Public Policy, AT&T Corp. dated July 3, 1997 ("*AT&T Letter*"); Letter to Reed E. Hundt, Chairman, FCC from Jonathan B. Sallet, Chief Policy Counsel, MCI Communications Corp. dated July 10, 1997 ("*MCI Letter*").

⁵ The Commission need not look far for evidence that the ILECs uniformly have failed to make good on commitments to provide UNEs and number portability in accordance with the terms of their own interconnection agreements, the 1996 Act and Commission rules. The record in ACSI's own complaint proceeding against BellSouth, the comments filed in support of the LCI/CompTel Petition for Expedited Rulemaking regarding OSS, and the comments
(continued...)

that there is a pronounced need for the Commission to take action necessary to ensure that ILECs meet their statutory and regulatory obligations.

In this regard, it is important to note that the Eighth Circuit's *Iowa* decision — including its conclusion that the Commission does not have the authority to resolve disputes involving contractual rights arising out of interconnection agreements — in no way limits the Commission's authority to address violations of the 1996 Act and to adopt and enforce its own regulations in those areas where Congress explicitly contemplated that the Commission would play a role.⁶ In fact, the Eighth Circuit plainly found that the Commission has "authority to prescribe and enforce regulations to implement the requirements of [six discrete subsections of] Section 251."⁷ Specifically, the Court found that Congress gave the Commission authority to issue and enforce rules with respect to (1) unbundled network elements, (2) number portability, (3) numbering administration, (4) prevention of discriminatory conditions on resale, (5) continued enforcement of exchange access and (6) treatment of comparable carriers as incumbents.⁸ Thus, in order to ensure that the intent of Congress is realized (at least with respect to these subsections), ACSI submits that the

⁵(...continued)

filed in opposition to the BOCs' section 271 applications are rife with examples that demonstrate that ILECs are doing little more than paying lip service to their contractual, statutory and regulatory obligations regarding the provisioning of UNEs and number portability.

⁶ *Iowa Utilities Bd.*, slip op. at 103 n.10 and 127.

⁷ *Id.* at 127.

⁸ *Id.* at 103 n.10.

Commission can and must take an active role in clarifying the statutory and regulatory obligations set forth in and pursuant to those subsections by engaging in appropriate rulemaking and enforcement activities as set forth below.

A. The Commission Must Establish Additional Rules Addressing ILEC Provisioning of UNEs

Significantly, the *Iowa* decision makes clear that the Commission has authority to issue and enforce rules with respect to the ILECs' provisioning of UNEs, under subsection 251(d)(2). Thus, the court not only upheld the bulk of the Commission's unbundling rules but also concluded that the Commission has the authority to enforce those regulations and adopt additional rules, as it deems appropriate. More than a year after the Commission's unbundling rules were issued, ILECs remain unwilling and, in many cases, unable to comply with those rules. Accordingly, ACSI submits that the Commission must adopt additional rules to clarify the ILECs' statutory and regulatory unbundling obligations. Moreover, the Commission should make clear that its section 208 complaint process is available to parties seeking to hold ILECs to these obligations.

Perhaps nowhere is the need for supplemental Commission rulemaking more evident than in the area of OSS.⁹ The record in RM 9101 (LCI/CompTel Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems) and ACSI's own experiences demonstrate that not a single

⁹ The Eighth Circuit upheld the Commission's determination that OSS is a network element that must be unbundled pursuant to section 251(d)(2). *Id.* at 130.

ILEC currently provides reasonable and nondiscriminatory access to OSS (as is necessary for the ordering of other UNEs), despite the Commission's January 1, 1997 deadline for doing so. For example, ACSI's own experiences in attempting to enter local exchange markets prove that many carriers, *e.g.*, BellSouth, have been unable to establish appropriate electronic interfaces for OSS, but rely instead on error-prone and time-consuming manual ordering systems. Although BellSouth's difficulties in meeting its statutory OSS obligations run much deeper than that, nothing more need be said to prove that BellSouth's claim that it already is meeting its obligation to provide reasonable and nondiscriminatory access to OSS is pure fiction of the most fantastic kind.¹⁰

Unlike BellSouth, some carriers do not even make such pretense of compliance. For example, U S West, alone among the BOCs and GTE, has refused to produce a facilities-based ordering guide ("FBOG") to provide would be competitors with instructions for ordering UNEs. Without an FBOG or other guidelines for ordering UNEs, competitors cannot begin to order UNEs on a reliable, much less on an electronic, basis.

Although much more can be said on this issue, ACSI respectfully refers the Commission to the comments filed in support of the LCI/CompTel Petition and reiterates its position that the Commission immediately should grant the Petition and conduct the rulemaking requested therein on an expedited basis. Unless OSS performance standards, including measurement categories and formulas, default performance intervals, and reporting

¹⁰ See BellSouth Comments, RM 9101, at 4.

requirements, are adopted, competitive entry (and BOC interLATA entry) will remain stalled, in frustration of the underlying goals of the 1996 Act.

Similar problems with the ILECs' provisioning of other UNEs can be documented.¹¹ Unsurprisingly, the most acute among them is the ILECs' provisioning of unbundled loops. ACSI's own formal complaint proceeding against BellSouth gives just a hint of the problems that it and other competitors are facing with ILECs across the nation.¹² Like BellSouth, U S West also has proven that it is incapable of provisioning unbundled loops on a dependable basis. In the case of a few test orders placed by ACSI, U S West took two to three weeks to respond and confirm with a customer service record. In the interim, U S West sent its own sales agents out to ACSI's newly signed customers in an attempt to secure "win-back" sales.¹³ If U S West requires additional rules to help it discern the obvious fact that such activity is an impermissible anticompetitive use of its monopoly power and is patently inconsistent with the 1996 Act, ACSI respectfully suggests that the Commission promptly should open a rulemaking so that it can adopt them.

In any event, ACSI submits that the Commission should commence a rulemaking along the lines proposed by the LCI/CompTel Petition with regard to ILEC provisioning of

¹¹ U S West, for example, is patently and unabashedly unable to provision *any* UNEs on a reliable basis.

¹² *ACSI v. BellSouth*, File No. E-97-09. The record in this proceeding demonstrates that BellSouth's provisioning of unbundled loops was so unreliable that ACSI temporarily suspended its submission of loop orders so as to preserve its own goodwill with consumers.

¹³ MCI has experienced similar problems with Southwestern Bell, PacBell and BellSouth. See *MCI Letter* at 6.

loops and other UNEs. With regard to the provisioning of loops, the Commission should mandate parity, adopt measurement standards and reporting requirements, and assess penalties on a case-by-case basis for ILEC failures to meet statutory unbundling obligations.¹⁴ As is the case with OSS, competitive entry into both the local and interLATA markets will be forestalled until the ILECs demonstrate the ability to provision unbundled loops and other UNEs on a reliable basis.

B. The Commission Must Adopt an Aggressive Enforcement Posture

ASCI concurs in MCI's statement that "[e]nforcement presents one of the most critical means by which the Commission can ensure the development of a competitive local marketplace."¹⁵ Importantly, the Eighth Circuit's *Iowa* decision left in tact the Commission's enforcement power with respect to many critical local competition provisions of section 251 and left other aspects of the Commission's enforcement authority unaddressed. In fact, the *Iowa* decision explicitly confirms that the Commission has enforcement authority in all six areas identified by the court as areas in which Congress intended for the Commission to act.¹⁶ Although the court determined that the Commission's jurisdiction

¹⁴ Such penalties would necessarily be distinct from those that may be called for in individual agreements that are to be enforced by the state PUCs.

¹⁵ *MCI Letter* at 12.

¹⁶ *Iowa Utilities Bd.*, slip op. at 103 n.10 and 127 ("the FCC has "authority to prescribe and enforce regulations to implement the requirements of [subsections 251(b)(2) (number portability), 251(c)(4)(B) (prevention of discriminatory conditions on resale), 251(d)(2) (unbundled network elements), 251(e) (numbering administration), 251(g) (continued
(continued...)

does not extend to the pricing or arbitration decisions of the state PUCs,¹⁷ the Commission nevertheless retains its organic authority to enforce, *inter alia*, the unbundling and number portability provisions of the 1996 Act and its own rules promulgated thereunder.

Accordingly, ACSI submits that the Commission should make clear that its section 208 complaint process is available to parties seeking to hold ILECs to these statutory and regulatory obligations. ACSI's current complaint proceeding against BellSouth provides an example of the type of complaint proceeding over which the Commission has jurisdiction. In its complaint, ACSI asserts that BellSouth failed to provision unbundled loops and service provider number portability on just and reasonable terms and, thus, violated the 1996 Act and the Commission's regulations implementing the Act.¹⁸ The Eighth Circuit's *Iowa* decision leaves no doubt that the Commission has jurisdiction to ensure that BellSouth complies with these statutory and regulatory requirements (irrespective of the contractual rights that ACSI has pursuant to its state PUC approved interconnection agreement with

¹⁶(...continued)
enforcement of exchange access), and 251(h)(2) (treatment of comparable carriers as incumbents)])" (emphasis added).

¹⁷ *Id.* at 120-22.

¹⁸ See, e.g., 47 C.F.R. §§ 51.313(b) (access to UNEs shall be provided at any technically feasible point and upon just, reasonable and nondiscriminatory terms and conditions); 52.27 (transitional measures for number portability shall be provided until such time as the LEC implements a long-term database method); 52.21(p) (incorporating the requirement that service provider number portability be provided without impairment of quality, reliability or convenience into the definition of the term).

BellSouth). Accordingly, ACSI urges the Commission to act promptly on its complaint against BellSouth and other complaints or petitions like it.

Given the current stalled state of competitive entry and the time and expense associated with the use of the Commission's formal complaint process, ACSI also supports AT&T's and MCI's proposals for a "fast track" or "quick look" procedure for resolution of "local competition" complaints.¹⁹ Like MCI, ACSI is convinced that ILECs currently engage in anticompetitive actions with the comfort of knowing that regulatory agencies historically have taken significant amounts of time to render decisions.²⁰ For example, there is little reason to believe that BellSouth will rectify its loop provisioning problems without a specific directive from the Commission.²¹ Meanwhile, ACSI must continue to contend with such obstacles as it proceeds with its push into the Georgia local exchange market.

The Commission could remove many roadblocks to local *and* long distance entry in a more timely and cost-efficient manner, if it adopted an expedited dispute resolution mechanism along the lines proposed by AT&T and MCI. Adoption of such an enforcement mechanism would afford parties the opportunity to get beyond what in many cases appear to

¹⁹ *AT&T Letter* at 10; *MCI Letter* at 12.

²⁰ *MCI Letter* at 12.

²¹ Despite the Commission's best efforts toward expedited resolution of ACSI's complaint (efforts which ACSI recognizes and appreciates), seven months have now past with little progress shown by BellSouth with regard to its ability to reliably provision unbundled loops.

be intractable disputes and focus on competition, as Congress intended. Moreover, adoption of an expedited dispute resolution mechanism also would ensure that fewer complaints go unfiled for fear of financial drain (of all the current and would be local competitors, only the largest IXC's have pockets as deep as those of the BOC's and GTE). Accordingly, ACSI urges the Commission to remove the ILEC's' ability to rely on delay traditionally associated with regulatory enforcement and their own ability to finance and sustain prolonged litigious proceedings by adopting a local competition dispute resolution mechanism capable of addressing complaints quickly and in a cost-efficient manner that renders the process useable by competitors of all sizes.

II. Pending Appeal of the Eighth Circuit's *Iowa* Decision, the Commission Should Modify Its "Pick and Choose" Rule

Contrary to what ACSI believes to be the plain meaning of the language of section 252(i), the Eighth Circuit vacated the Commission's "pick and choose" rule based on its conclusion that the rule "conflicts with the Act's design to produce negotiated agreements."²² Faced with this decision, the Commission must now modify (at least on an interim basis) its rule so that it comports with the court's stated rationale of protecting "the give-and-take process that is essential to successful negotiations"²³ while best effectuating Congress' plain purpose in enacting section 252(i).

²² *Iowa Utilities Bd.*, slip op. at 117.

²³ *Id.* at 116.

Like several other provisions in the 1996 Act, section 252(i) was designed by Congress to level the incumbents' distinct advantage in bargaining power and pronounced incentive to discriminate in favor of certain new entrants (and, obviously, affiliates). Accordingly, ACSI proposes that the Commission adopt a rule that allows requesting carriers to pick and choose among *entire sections* (as opposed to individual provisions) of state PUC approved interconnection agreements. This adjustment clearly accommodates the Eighth Circuit's concern over the "give-and-take" process essential to successful negotiations, as concessions made by both parties in the process of hammering-out a section of an agreement (*i.e.*, the portion of an agreement pertaining to resale or unbundled loops) would have to be adopted. The fact that several ILECs, including SBC, already have adopted this negotiating posture indicates that this proposal represents a workable interim solution pending appeal of this portion of the Eighth Circuit's *Iowa* decision.

In any event, ACSI urges the Commission to revisit its interpretation on section 252(i) promptly. Clarification cannot await the result of an appeal. GTE has wasted no time in twisting the Eighth Circuit's already flawed line of reasoning to support its position that once a party has entered into an interconnection agreement, it no longer has the option of adopting the terms and conditions of any other agreement (even if it proposed to do so in its entirety), until the carriers' pre-existing agreement expires. The fact that ACSI has been informed by other new entrants that other ILECs, including Ameritech, PacBell and Sprint, have indicated their intent to adopt variations of GTE's latest end-run around the provisions of section 252(i) underscores that the Commission must, at the very least, set forth interim regulations

designed to implement that section in a way that best effectuates Congress' intent while paying appropriate deference to the Eighth Circuit's decision pending appeal.

III. The Commission's Public Interest Assessment of Section 271 Applications and ILEC Transfers Should Incorporate, *Inter Alia*, the Commitments Made By Bell Atlantic/NYNEX In Exchange for Expedited Commission Approval of Their Proposed Merger

ACSI applauds the Commission's success in gaining concessions from Bell Atlantic/NYNEX in exchange for expedited approval of the two BOCs' proposed merger.²⁴ In light of the time it will take to (1) conduct rulemakings necessary to implement the actions proposed herein and (2) complete an appeal of the Eighth Circuit's *Iowa* decision, ACSI implores the Commission to use the Bell Atlantic/NYNEX commitments as a *starting point* for its public interest assessment of all BOCs' applications for in-region interLATA authority made pursuant to section 271.

Surely, if Bell Atlantic/NYNEX is capable of providing:

- UNEs at rates (including both recurring and non-recurring charges) based on forward-looking, economic costs;
- performance monitoring reports;

²⁴ See Letter to Kathleen Levitz, Deputy Bureau Chief, FCC from Thomas J. Tauke and Edward D. Young, III, Bell Atlantic/NYNEX dated July 19, 1997, *Application of Bell Atlantic Corporation and NYNEX Corporation for Consent to Transfer*, NSD-L-96-10 (Tracking No. 96-0221).

ACSI does not agree, however, with the Commission's anticipated decision to approve the proposed merger.

- uniform interfaces for access to OSS and operational testing of such interfaces; and
- options to carriers purchasing interconnection that otherwise would incur (daunting) one-time, non-recurring charges;

and can commit to establishing performance standards for pre-ordering, ordering, provisioning (including resale, number portability and UNEs), billing, maintenance and repair functions, network performance and blockage, as well as appropriate enforcement mechanisms to ensure compliance with each standard (including private or self-executing remedies), then it would be in the public interest to hold other BOCs to no lower standard. In sum, no future section 271 application should be considered complete without incorporating an equally comprehensive list of commitments.

ACSI also submits that the public interest assessment of future section 271 applications should include the following requirements:

- the BOC, at any point during the term of an agreement, must allow requesting carriers to "pick and choose" among *individual* provisions of other state PUC approved interconnection agreements;
- the BOC must agree to provide on an unbundled basis any network element for which unbundling is "technically feasible"; and
- the BOC must agree to make any necessary amendments to licensing agreements, so as to prevent infringement of the intellectual property rights of third party equipment vendors.²⁵

²⁵ ACSI agrees with AT&T that section 251(c)(3) requires *all* ILECs to amend existing licensing agreements with equipment vendors that do not authorize use by CLECs of third party equipment vendors' intellectual property embedded in the ILEC's network. Accordingly, ACSI concurs in AT&T's recommendation that the Commission grant MCI's
(continued...)

Recognizing that the section 271 entry process is incapable of reaching all ILECs (and will not soon reach any BOC that places interLATA entry low on its list of priorities), ACSI urges the Commission to adopt the foregoing proposals as part of its public interest review of any future proposed ILEC transfer of licenses. Taken together, the Commission's public interest review of section 271 applications and ILEC requests for authority to transfer can go a long way toward recovering the time and ground that was lost as a result of the Eighth Circuit's *Iowa* decision. Regardless of erroneous nature of many of the Eighth Circuit's holdings, the Commission remains charged to take all actions necessary to ensure that Congress' goal of establishing competitive local markets comes to fruition. Having been stripped of key elements of its jurisdiction, the Commission, now more than ever, must rely on its mandate to regulate in the public interest, if it is to ensure that the pro-competitive goals of the 1996 Act are realized.

²⁵(...continued)

Petition for Declaratory Ruling, CCBPol 97-4, filed Apr. 15, 1997, on this topic. *AT&T Letter* at 2.

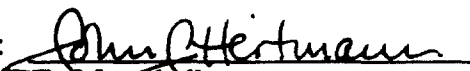
IV. Conclusion

For all the foregoing reasons, ACSI believes that the Commission can and must take an active role in removing roadblocks to local competition by taking appropriate regulatory actions and adopting an aggressive enforcement posture and accessible enforcement procedure, as outlined above. ACSI is ready and willing to assist the Commission in this process and gladly will provide further information and analysis upon request.

Respectfully submitted,

**AMERICAN COMMUNICATIONS
SERVICES, INC.**

Riley M. Murphy
Charles H. N. Kallenbach
James C. Falvey
AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business
Parkway
Suite 100
Annapolis Junction, MD 20701

By: 
Brad E. Mutschelknaus
John J. Heitmann
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

(202) 955-9600

Its Attorneys

August 11, 1997

CERTIFICATE OF SERVICE

I, Michele Depasse, hereby certify that I have caused a copy of the foregoing "Response of American Communications Services, Inc.," to be served on this 11th day of August, 1997, by U.S. mail, first class postage, upon the following:

Claudia Pabo*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Susan L. Fox*
Enforcement Task Force
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Regina Keeney, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Barbara Esbin*
Associate Bureau Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, D.C. 20554

A. Richard Metzger, Jr.*
Deputy Bureau Chief, Operations
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Mary Beth Richards*
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

James Schlichting, Chief*
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

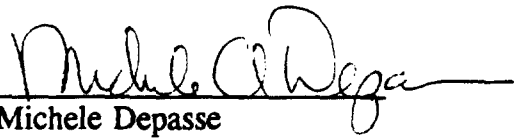
John B. Muleta*
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 6008
Washington, D.C. 20554

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Jeanine Poltronieri*
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

* Hand Delivered

ITS, Inc.*
2100 M Street, N.W.
Room 140
Washington, D.C. 20037


Michele Depasse